IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 32110 of 2004(V)

AGAINST THE ORDER IN IA 2019/2004 IN
OS.140/1998 of MUNSIFF COURT, MANJERI

.....

PETITIONERS:

---

1. THITHUMMA D/O. ARIMBRA THAYYIL
   KUNHAYAMUTTY HAJI, EDAPPATTA AMSOM DESOM,
   PERINTHALMANNA TALUK.

2. AHAMMED S/O ARIMBRA THAYYIL KUNHAMMUTTY
   EDAPPATTA AMSOM AND DESOM, PERINTHALMANNA TALUK.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:

---

1. HAMSA S/O. LATE MOIDEEN,

2. ABU, S/O. DO.

3. ALAVI, S/O. DO.

4. PATHUMMA D/O. DO.

5. SARAFUNNISA D/O. DO. DO.

6. UMMU SALMA D/O. DO.

7. NABEESA, D/O. DO.

8. MOHAMMED,

9. ABDU,

10. AMINA,

11. RASAQ,
ALL ARE RESIDING AT EDAPPATTA AMSOM DESOM,
PERINTHALMANNA TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT IN OS NO.140 OF 1998 FILED BY THE PETITIONERS BEFORE MUNSIFF'S COURT, MANJERI.

EXT.P2 : TRUE COPY OF THE ROUGH SKETCH SUBMITTED BY ADVOCATE COMMISSIONER DT.31.3.1998.

EXT.P3 : TRUE COPY OF AFFIDAVIT ACCOMPANYING IA NO.2019 OF 2004 IN OS NO.140 OF 1998 OF THE MUNSIFF COURT, MANJERI DT.17.9.04.

EXT.P4 : TRUE COPY OF COMMISSION REPORT SUBMITTED BY ADVOCATE COMMISSIONER, ABRAHAM IYYATTIL IN OS NO.140 OF 1998 DT.4.8.04.

EXT.P5 : TRUE COPY OF PLAN SUBMITTED BY -DO- DT.4.8.04.

EXT.P6 : TRUE COPY OF THE ORDER IN IA NO.2019 OF 2004 IN OS NO.140 OF 1998 OF THE MUNSIFF COURT, MANJERI, DT.29.9.04.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 32110 OF 2004

Dated this the 15th day of June, 2007

JUDGMENT

The writ petition is remaining defective for want of service of notice to 5th respondent. Notice to 5th respondent is returned with endorsement “refused”. It is declared that the 5th respondent is served with notice.

2. In a suit for injunction, a commissioner was appointed for identifying the property with reference to the plaint schedule descriptions and survey plan. The court deputed a retired surveyor to assist the commissioner in the matter of measurement. The commissioner submitted Ext.P4 report and Ext.P5 plan. Petitioners filed Ext.P3 objections to the commissioner's report and filed the instant application for remitting the plan and report to the commissioner on the ground that the plaint schedule property has not been identified properly with reference to the boundaries. No written objections were filed by the respondents-defendants to the application. But it appears that orally the petitioners' application was opposed. The learned Munsiff has passed Ext.P6 order which is a very cryptic one dismissing the application finding that no infirmity is noticed in the report warranting its remittance. Even though the learned Munsiff has found so, it appears to me that the

learned Munsiff was anxious to have the trial commenced in the suit which was 6 years old as on the date of order. Though the application was dismissed, it has been observed in the order itself that it is open to the petitioner to bring out infirmities in the commission report at the time of trial.

3. Even though notice has been served on all the respondents, none of them have entered appearance in this court to resist the prayers in the writ petition. On hearing Sri.Jayesh Mohankumar, counsel for the petitioners, I find some merit in his submission that in Ext.P5 plan the commissioner has not shown the boundaries of the plaint schedule properties at all and to that extent the complaint that the plaint schedule property has not been identified with reference to the plaint schedule description cannot be said to be totally without merit. Nevertheless I am not inclined to allow IA No.2019 of 2004 straight away I set aside Ext.P6 and remit IA No.2019 of 2004 to the learned Munsiff.

Since a proper identification of the plaint schedule property is crucial to the decision in the suit itself I direct the learned Munsiff to permit the petitioner to adduce evidence in IA No.2019 of 2004 by cross examining the commissioner and the surveyor. Once such evidence is recorded, the learned Munsiff will hear the parties and take a fresh

decision in IA No.2019 of 2004. The above direction shall be complied with by the learned Munsiff within six weeks of receiving copy of this judgment.

PIUS C. KURIAKOSE, JUDGE

btt